

REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

I. Status of the Claims

Claims 1, 11, 12, 13, 14, 17 and 27 are currently amended. Claims 2, 3 and 5 are canceled. Hence, upon entry of this paper, claims 1-25 and 26-31 will remain pending.

The cancellation of claims does not constitute acquiescence in the propriety of any rejection set forth by the Examiner. Applicants reserve the right to pursue the subject matter of the canceled claims in subsequent divisional applications.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

II. The Restriction/Election Requirement

The Examiner required restriction, under 35 U.S.C. §§ 121 and 372, and considers the application to contain distinct inventions, directed to twenty nine (29) groups designated Groups I-XXIX. The Examiner alleges that the group of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1. In addition, the Examiner has required an election of species based on which group of inventions Applicants elect. For Group I, the Examiner requires election of a single species of domain that specifically binds to/interacts with the human CD3 complex. Furthermore, if the elected sequence is encoded by a claimed nucleic acid sequence SEQ ID NO, Applicants are requested to identify both sequences.

In response, Applicants hereby provisionally elect, with traverse, Group I, Claims 1-15, 23-25 and 31, drawn to bispecific binding molecules. In response to item 6 of the Office Action (page 43), Applicants elect, with traverse, the species of SEQ ID NO. 9 (nucleic acid

sequence) and SEQ ID NO. 10 (amino acid sequence). In response to item 9 of the Office Action (page 45-46), Applicants elect, with traverse, the species EpCAM.

Applicants reserve the right to rejoinder. Applicants note that upon allowance of any linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claims depending from or otherwise requiring all of the limitations of the allowable linking claims will be rejoined and fully examined for patentability in accordance with 37 C.F.R. 1.104.

III. Claim Amendments

In an effort to advance prosecution of this application and without acquiescing to the propriety of this rejection, Applicants have amended the claims to limit the independent claim to an antibody derived light chain having the amino acid sequence of SEQ ID NO.: 10 or its nucleic acid sequence of SEQ ID NO.:9. Accordingly, Applicants believe the restriction between Group I and Group II is now moot.

IV. Claims Meet Unity of Invention Standard

Applicants maintain that the Office has misapplied the unity of invention standard and the current claims comply with this international standard. In fact, the International Preliminary report on Patentability and the Written Opinion of the International Bureau for this PCT application (issued August 22, 2006) did not find a unity of invention issue, searched all of the claims and was able to make a determination regarding the patentability of the subject matter of all claims in this application. Therefore, proper implementation of the unity of invention standard has and can be utilized by the Office to examine all of the claims in this application.

V. The Search of Groups I-II and All Species are Not Unduly Burdensome

Applicants also traverse the restriction requirement on the grounds that the search and examination of the remaining claims in Group II are not unduly burdensome. According to MPEP section 803 "if a search and examination of an entire application can be made without

serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions.”

The invention of Group I (claims 1-15, 23-25 and 31) are drawn to bispecific binding molecules. Group II relates to nucleic acid sequences encoding a bispecific binding molecule. Accordingly, since Applicants have chosen SEQ ID NO. 9 (nucleic acid sequence) and SEQ ID NO. 10 (amino acid sequence), there would be no undue burden for the Examiner to review Group II along with Group I.

Additionally, there would be no undue burden for the Examiner to search and examine the species of Group I. As the literature for bispecific molecules is well established, review of these references regarding all of the species of the current claims is not an undue burden. Accordingly, if the Examiner agrees to rejoin Group II with Group I, and needs Applicants to elect a species from Group II, Applicants would elect EpCAM/CD3 constructs in line with the current election of species.

Accordingly, Applicants respectfully believe that claims 1-25 and 31 should be reviewed without restriction.

CONCLUSIONS

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 10, 2010

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4620
Facsimile: (202) 672-5399

By 

Benjamin A. Berkowitz
Attorney for Applicant
Registration No. 59,349